



California Regional Water Quality Control Board

San Diego Region

Winston H. Hickox
Secretary for
Environmental
Protection

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Gray Davis
Governor

TO: Edward Anton
Acting Executive Director
State Water Resources Control Board

FROM: John H. Robertus
Executive Officer
San Diego Regional Water Quality Control Board

DATE: May 30, 2000

SUBJECT: COVENANT DEFERRAL REQUEST FOR PROPERTY AT FORMER NAVAL
TRAINING CENTER (NTC), SAN DIEGO, CALIFORNIA

The Navy has proposed to transfer a portion of the former Naval Training Center (NTC), San Diego property to the San Diego Unified Port District (Port) via the covenant deferral provision of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 120(h)(3)(C). The Navy has signed a Finding of Suitability for Early Transfer (FOSET) for the proposed property, Parcels IV and V, known collectively as IR Site 1 (Inactive Landfill). The property, totaling approximately 51 acres, is proposed for transfer to the Port and is included in the City of San Diego's redevelopment plan for NTC. The Port's immediate proposed plan for Parcels IV and V include various airport uses, principally as a vehicle parking and staging area for shuttles, taxis, and airport employees. To accomplish this plan, the Port proposes to pave with asphalt the southern 20 acres of the landfill, and to continue to maintain the remaining soil cover while monitoring groundwater impacts at the site. In order to complete the "early transfer" of this contaminated property under CERCLA I have prepared a Governor Action Request (GAR) for transmittal to Mr. Hickox and signature by Governor Davis. Since the former NTC is not on the National Priority List (NPL), CERCLA allows the Governor to defer the covenant warranty requirement and to determine that the property is suitable for early transfer prior to completion of the remedial action if certain findings are made. These CERCLA findings have been made in a proposed draft letter to the Assistant Secretary of the Navy. The proposed letter is included as an attachment to the GAR, and states that the property is suitable for early transfer under the covenant deferral process. I have also included a copy of the FOSET and attached Environmental Response Obligations Addendum (EROA) document for your reference.

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The Navy's covenant deferral request package for the early transfer of this property is anticipated to be submitted to the Governor in early June, and will contain the FOSET and attached EROA, the Quitclaim Deed, and the Environmental Services Cooperative Agreement.

If you have any questions regarding this request or on the facility transfer status please contact Mr. Corey Walsh of my staff at CALNET 734-2980.

cc:

Ms. Content Arnold, Remedial Project Manager, BRAC Operations Office, 1230 Columbia Street, Suite 1100, San Diego, CA 92101

Ms. Andrea Muckerman, Southwest Division Naval Facilities Engineering Command, Base Realignment and Closure (BRAC) Operations, 1230 Columbia Street, Suite 1100, San Diego, CA 92101

Mr. Dan Wilkens (Attention: Mr. Rick Adcock), San Diego Unified Port District, P.O. Box 120488, San Diego, CA 92112

Mr. Martin Hausladen, U.S. EPA, Region IX, (H-9-2), Hazardous Waste Management Division, 75 Hawthorne Street, San Francisco, CA 94105-3901

Ms. Marcella Escobar-Eck, City San Diego, NTC Reuse Project Director, 202 C Street, MS3A, San Diego, CA 92101

Mr. Paul Manasjan, City of San Diego, Local Enforcement Agency, Mail Code MS501, 1222 First Avenue, San Diego, CA 92101-4155

Mr. John Richards, Office of the Chief Counsel (OCC), 901 P Street, Sacramento, CA 95814 (**e-mail copy only**)

Mr. Gino Yekta, Waste Management Engineer, Closure and Remediation Branch, Integrated Waste Management Board, 8800 Cal Center Drive, Sacramento, California 95826-3268

Mr. John Adams, SWRCB Clean Water Programs, DoD Program Manager, Sacramento CA (**e-mail copy only**)

Mr. Mark Alpert, RWQCB R-9

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DRAFT

GOVERNOR DAVIS' ACTION REQUEST

TO: FILE

ATTENTION: Susan P. Kennedy
Cabinet Secretary

FROM: Winston H. Hickox
Agency Secretary

PREPARED BY: Edward Anton
Acting Executive Director
State Water Resources Control Board

DATE:

SUBJECT: COVENANT DEFERRAL REQUEST FOR PROPERTY AT FORMER
NAVAL TRAINING CENTER (NTC), SAN DIEGO

_____ Request for Approval

_____ For Governor's Information

_____ Request for Cabinet Approval

 X For Governor's Signature

DUE DATE: Proposed conveyance date of property: July 5, 2000

SUMMARY-PRO/CON ARGUMENTS: This memorandum provides information and a recommendation concerning a request for the Governor's approval of an "early transfer" of contaminated Federal property under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 120(h)(3)(C). Generally, when a Federal agency transfers real property on which hazardous substances are known to have been released or disposed of, the Federal agency must complete the remedial action prior to the transfer. The deed transferring the property must contain a covenant warranting that all remedial action necessary to protect human health and the environment with respect to any such hazardous substances remaining on the property has been taken before the date of a property transfer. In addition the warranty must include a statement that any remedial action found to be necessary after the date of transfer shall be conducted by the Federal government. For sites not listed on the National Priority List (NPL), CERCLA Section 120(h)(3)(C)(i) authorizes the Governor to defer the covenant warranty requirement and

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determine that the property is suitable for early transfer prior to completion of the remedial action if certain findings are made.

The former Naval Training Center (NTC), San Diego occupies approximately 540 acres (11 parcels) adjacent to San Diego International Airport (Lindbergh Field) / San Diego Bay, and is not listed on the NPL. The Navy has proposed the early transfer under the covenant deferral process for two of these parcels, Parcels IV and V, to the San Diego Unified Port District (Port). The Navy has completed a "Finding of Suitability for Early Transfer" (FOSET) to document the assessment and evaluation of the environmental condition of the property and to determine the property's suitability for deed transfer. This evaluation has included: identification of hazardous substances and contamination; environmental impacts anticipated from the intended use; and adequacy of intended actions, including institutional controls, to assure that the proposed use is consistent with the protection of human health and the environment. The FOSET parcels, known collectively as Installation Restoration (IR) Site 1 (Inactive Landfill) consist of approximately 51 acres. The remaining portions of the former NTC will be transferred to the City of San Diego under a separate Finding of Suitability to Transfer (FOST) process.

The FOSET property was once a municipal-type landfill that received waste generated by NTC and Marine Corps Recruit Depot (MCRD), and operated from the early 1950's to 1971. The exact materials disposed of at the Inactive Landfill and their associated quantities are unknown. Recent intrusive investigation work into the Inactive Landfill determined that consumer debris/refuse, burned refuse, construction debris, and landscape debris were present at an estimated volume ranging between 95,000 and 150,000 cubic yards. In addition, knowledge of base operations at the time the refuse was disposed of suggest that additional classes of wastes could also have been disposed of in the Inactive Landfill. These wastes may include infectious wastes, paint wastes, wood preservatives, liquid hazardous wastes, pesticides, pentachlorophenol sludges, polychlorinated biphenyls (PCBs), methyl ethyl ketone, methyl isobutyl ketone, xylenes, metal plating wastes, and industrial wastes. The Inactive Landfill has been the subject of substantial environmental investigations since approximately 1992, and was originally regulated under Waste Discharge Requirements (Resolution 59-R20) issued by the Regional Water Quality Control Board – San Diego Region (RWQCB).

Currently, the Inactive Landfill is subject to groundwater monitoring and cover maintenance activities. Groundwater contamination is present and includes organic compounds and

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trace metals, which will require ongoing monitoring. Following the transfer, the Port will have the responsibility to implement the proposed remedial action, maintain the Inactive Landfill cover, and provide groundwater monitoring of the site. Landfill gas has also been detected in soil, which will also require further investigation and monitoring. The San Diego RWQCB is currently the lead State regulatory agency overseeing site investigation and monitoring activities at the facility. The RWQCB will continue to provide oversight of the implementation and evaluation of the proposed remedial action through the issuance of Post-Closure Waste Discharge Requirements (WDRs).

ARGUMENTS PRO: The ability to make an early transfer of contaminated property is supported by the Department of Defense (DoD), U.S. Environmental Protection Agency (EPA), members of the Restoration Advisory Board (RAB), developers, and the City of San Diego acting as the Local Reuse Authority (LRA). The Port is acquiring this portion of former NTC for its proposed airport expansion, which will include a vehicle parking and staging area for shuttles, taxis, and airport employees.

CERCLA Section 120(h)(3)(C)(i) states that the Governor should base the determination of early transfer on the following findings: (1) the property is suitable for the use intended by the transferee and the intended use is protective of human health and the environment; (2) the deed transferring the property must include assurances that the restrictions are included in the deed to protect human health, that the required remedial actions are completed and not interfered with, that time schedules for remedial action are identified, and that the Navy has requested adequate funding for the remedial action; (3) the Navy has provided the public with notice and an opportunity to comment on the proposed transfer; and (4) the deferral and the transfer of the property will not substantially delay the remedial action.

1. Suitability for Intended Use

The Port has requested use of this “early transfer” authority for the Inactive Landfill parcels in order to gain access to the parcels for its improvements to Lindbergh Field, and will remediate and develop the site simultaneously. The Port’s proposal is to pave 20 acres of the southern 26 acres of the Inactive Landfill for use as a vehicle parking area. The northern half of the Inactive Landfill will remain open space, but will require cover improvements and ongoing maintenance of the cover. The RWQCB agrees that the property is suitable for transfer for the use intended by the Port and that the intended use

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will be protective of human health and the environment. The Port will be issued Post-Closure WDRs by the RWQCB to assure that the Inactive Landfill is properly monitored and maintained.

2. Assurances in the Deed

The RWQCB has received a copy of the draft deed and it includes the assurances required in CERCLA Section 120(h)(3)(C). Deed restrictions will be included to prevent the property from being used for residential purposes, to prohibit the use of contaminated groundwater, and to restrict the activity that will adversely impact the cover. Access to the waste will be restricted with installation of pavement and cover improvements followed by ongoing maintenance of the cover. Groundwater monitoring is required to assure that no offsite impacts occur. Groundwater at the site is within the Lindbergh Hydrologic Sub-Area (908.21) of the Pueblo San Diego Hydrologic Unit and is classified as "exempt" from the municipal use designation under the terms and conditions of State Board Resolution 88-63. The Navy and the Port have an agreement that the Port will complete the response action and will be compensated with a negotiated sum.

3. Public Notice and Comment

The Navy has provided the public with notice and an opportunity to comment on the proposed transfer, including public comment on the FOSET.

4. Delay of Response Action

The deferral will not delay the response action. The Port will be taking the response action, (i.e., capping and maintaining the Inactive Landfill), in order to use it for its intended purpose.

ARGUMENTS CON: The Draft FOSET was publicly noticed for 30 days and no arguments against the proposed transfer were received. There is no known opposition to this early transfer proposal, although a federal judge issued a temporary order preventing transfer of any NTC property until a hearing was held on a lawsuit filed by the Kumeyaay Indian tribes. The hearing was held on May 23, 2000 where the judge denied the request to block the transfer of a portion of the NTC property to the City of San Diego.

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EFFECT ON EXISTING LAW: The request is consistent with Federal law. There is no similar State law.

ESTIMATED COST: Following transfer of the property, the Port will be responsible for compliance with State regulations for Municipal Solid Waste facilities and payment of appropriate State and local permit fees. The State (RWQCB and IWMB) oversight costs will likely exceed State permit fees collected, and will include the following activities: review of technical documents (i.e. Report of Waste Discharge, Removal Action Work Plan, Removal Action Closure Plan, Closure Maintenance Plan, and ongoing Groundwater Monitoring Reports), implementation of the proposed remedial action, evaluation of remedy performance, and enforcement of long-term maintenance, monitoring, and institutional control requirements.

TIME FACTOR: The covenant deferral is in effect until the Port has completed all remedial action requirements. The Port will prepare an Action Memorandum or equivalent State decision document, which will identify the final selected remedial alternative and is expected to initiate the remedial response action by late 2000.

RECOMMENDATION: RWQCB recommends that the Governor approve the Navy's covenant deferral request. Attached is a proposed letter for the Governor's signature stating that the FOSET parcels are suitable for early transfer in accordance with the covenant deferral requirements found in CERCLA Section 120(h)(3)(C).

FILE/Susan P. Kennedy

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APPROVED:

Director/Chairperson

Date

Secretary or Agency

Date

Cabinet Secretary

Date

Chief of Staff

Date

Acting Staff Director

Date

Governor

Date

DRAFT

Mr. Robert B. Pirie, Jr.
Assistant Secretary
Installations and Environment
1000 Navy Pentagon
Washington, DC 20350-1000

Dear Mr. Pirie:

The State of California has reviewed the Navy's request for a covenant deferral under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 120(h)(3)(C), which defers the requirement for a federal covenant warranting that all remedial actions necessary to protect human health and the environment with respect to any such hazardous substance remaining on the property have been taken before the date of a transfer. For sites not listed on the National Priority List (NPL), CERCLA Section 120(h)(3)(C)(i) authorizes the Governor to defer the covenant requirement and determine that the federal property is suitable to transfer under the covenant deferral process. The Navy proposes to transfer Parcels IV and V of the former Naval Training Center (NTC), San Diego to the San Diego Unified Port District (Port).

The property identified in the request consists of approximately 51 acres of the former NTC San Diego facility. These 51 acres have been identified in the Finding of Suitability for Early Transfer (FOSET) Parcels IV and V, and are also known collectively as Installation Restoration (IR) Site 1 (Inactive Landfill). The Port is acquiring the former NTC property for various airport uses, principally as a vehicle parking and staging area for shuttles, taxis, and airport employees.

The FOSET property was once a municipal-type landfill that received waste generated by NTC and Marine Corps Recruit Depot (MCRD), which was operating from the early 1950s to 1971. The exact materials disposed of at the Inactive Landfill and their associated quantities are unknown. Recent intrusive investigation work into the Inactive Landfill determined that consumer debris/refuse, burned refuse, construction debris, and landscaping debris were present at an estimated volume ranging between 95,000 and 150,000 cubic yards. In addition, knowledge of base operations at the time the refuse was disposed of suggest that additional classes of wastes could also have been disposed of in the Inactive Landfill. These wastes may include infectious wastes, paint wastes, wood preservatives, liquid hazardous wastes, pesticides, pentachlorophenol sludges, polychlorinated biphenyls (PCBs), methyl ethyl ketone, methyl isobutyl ketone, xylenes, metal plating wastes, and industrial wastes. The

Inactive Landfill has been the subject of substantial environmental investigations since approximately 1992, and was originally regulated under Waste Discharge Requirements (Resolution 59-R20) issued by the Regional Water Quality Control Board – San Diego Region (RWQCB).

Currently, the Inactive Landfill is subject to groundwater monitoring and cover maintenance activities. Groundwater contamination is present and includes organic compounds and trace metals, which will require ongoing monitoring. Following the transfer, the Port will have the responsibility to implement the proposed remedial action, maintain the landfill cover, and provide groundwater monitoring of the site. Landfill gas has also been detected in soil, which will also require further investigation and monitoring. The RWQCB is currently the lead state regulatory agency overseeing site investigation and monitoring activities at the facility. The RWQCB will continue to provide oversight of the implementation and evaluation of the proposed remedial action through the issuance of Post-Closure Waste Discharge Requirements.

Based on the information provided in the covenant deferral package, which included a FOSET with an attached Environmental Response Obligations Addendum (EROA), a Quitclaim Deed, an Environmental Services Cooperative Agreement, and Proposed Findings, I find that:

1. The FOSET property is suitable for transfer for the use intended by the Port, and the intended use is consistent with protection of human health and the environment;
2. The deed or other agreement governing the transfer between the Navy and the Port contains assurances set forth in CERCLA Section 120(h)(3)(C)(ii);
3. The Navy has provided public notice in, *The San Diego Union Tribune* of the proposed transfer and of the opportunity for the public to submit written comments on the suitability of the property for transfer and has responded to all comments received during the 30-day public review period; and
4. The deferral and the transfer will not substantially delay any necessary response action at the former NTC, San Diego.

Therefore, I determine that the FOSET Parcels are suitable for transfer in accordance with CERCLA Section 120(h)(3)(C) and I defer the covenant required by CERCLA Section 120(h)(3)(A)(ii)(I).

This determination shall not be interpreted or deemed to be a waiver of any right of the State of California to require any remedial or removal

action by any appropriate party (including the Port) if information obtained in the future from any source indicates that the Navy or an appropriate party is responsible for such action and shall not be deemed an approval of any proposed response action.

Furthermore, this determination shall not be deemed or interpreted as an estoppel against the State of California. This determination is provided only on the basis of the information submitted by the Navy in the covenant deferral package.

Should you have any questions concerning this matter, please feel free to contact Mr. John H. Robertus, Executive Officer, California Regional Water Quality Control Board, San Diego Region, at (858) 467-2987.

Sincerely,

GRAY DAVIS

cc: Mr. Winston H. Hickox
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